

**11FEDERAL RAILROAD ADMINISTRATION
PASSENGER TRAIN EMERGENCY PREPAREDNESS
(Title 49 Code of Federal Regulations Parts 223 and 239)
SUPPORTING JUSTIFICATION
OMB Control No. 2130-0545**

Summary

- This submission is a request for an extension with change of the last three-year approval granted by the Office of Management and Budget (OMB) on July 19, 2017, and which expires July 31, 2020.
- The Federal Railroad Administration (FRA) published the required 60-day *Federal Register* Notice on April 15, 2020. See 85 FR 21066. FRA received no comments in response to this Notice.
- The total number of burden hours requested for this information collection is 350 hours. The total number of burden hours previously approved by OMB was 21,470 hours.
- The total number of responses requested for this information collection is 1,556. The total number of responses previously approved by OMB was 69,670.
- Overall, the adjustments decreased the burden by 21,120 hours and decreased responses by 68,144 after a thorough review of the data.
- The answer to question number 12 itemizes all information collection requirements with each requirement of these rules.
- The answer to question number 15 itemizes all adjustments associated with this rule.

1. Circumstances that make collection of the information necessary.

Background

On May 4, 1998, FRA published a final rule on passenger train emergency preparedness that was codified at Title 49 Code of Federal Regulations (49 CFR) Part 239, Passenger Train Emergency Preparedness, and as revisions to 49 CFR Part 223, Safety Glazing Standards.¹ That final rule addressed passenger train emergencies of various kinds, including security situations, and sets minimum Federal safety standards for the preparation, adoption, and implementation of emergency preparedness plans (EPP) by

¹ See 63 FR 24629.

railroads connected with the operation of passenger trains on standard gage track on the general railroad system of transportation. The rule required EPPs to include seven elements addressing communication, employee training and qualification, joint operations, special circumstances (e.g., identifying tunnels, elevated and depressed track sections, bridges, electrified track sections where evacuation would be difficult, and developing specific evacuation plans for those areas), liaison with emergency responders, on-board emergency equipment, and passenger safety information. Under the requirements of the rule, each affected railroad is required to instruct certain employees on the applicable provisions of its plan. In addition, the plan adopted by each railroad is subject to formal review and approval by FRA. The rule also requires each railroad operating passenger train service to conduct emergency simulations to determine its capability to execute the EPP under the variety of emergency scenarios that could reasonably be expected to occur.

On November 29, 2013, FRA published a final rule, which became effective January 28, 2014, amending FRA's Passenger Equipment Safety Standards by enhancing existing requirements for passenger train emergency systems as well as creating new requirements for passenger train emergency systems.² The final rule amended FRA's passenger train emergency preparedness regulations in Part 239, clarifying existing requirements for participation in debriefing and critique sessions following both actual passenger train emergency situations and full-scale simulations. Under the current regulation, a debriefing and critique session is required after each passenger train emergency situation or full-scale simulation to determine the effectiveness of the railroad's EPP. The railroad is then required to improve or amend its plan, or both, in accordance with the information gathered from the session. The language added in the Passenger Train Emergency Systems II (PTES II) final rule clarified that, to the extent practicable, all on-board personnel, control center personnel, and any other employee involved in the emergency situation or full-scale simulation must participate in the debriefing and critique session. The final rule also clarified that employees be provided flexibility to participate in the debriefing and critique sessions through a variety of different methods.

The Safety Act grants the Secretary of Transportation rulemaking authority over all areas of railroad safety (49 U.S.C. 20103(a)) and confers all powers necessary to detect and penalize violations of any rail safety law. Accordingly, FRA is using this authority to promulgate a rulemaking that would clarify and revise FRA's regulations for passenger train emergency preparedness. These standards are codified in Part 239, which was originally issued in May 1999 as part of FRA's implementation of rail passenger safety regulations required by Section 215 of the Federal Railroad Safety Authorization Act of 1994, Pub. L. No. 103-440, 108 Stat. 4619, 4623-4624 (November 2, 1994). Section 215 of this Act has been codified at 49 U.S.C. 20133.

2. How, by whom, and for what purpose the information is to be used.

² See 78 FR 71785 (November 29, 2013).

This is an extension with change to a current collection of information entirely associated with FRA's Part 239 rule. FRA currently reviews EPPs—and amendments to EPPs—filed with the agency to ensure that each railroad's plan covers the following essential parameters: communications, notifications by control center, emergency responder liaison, joint operations, special circumstances (e.g., tunnels, parallel operations, other operating considerations), employee training and qualification, passenger safety information, and on-board emergency equipment. FRA verifies that each EPP includes the name, title, address, and telephone number of the primary person on each railroad to be contacted with regard to review of the plan and that each EPP includes a summary of the railroad's analysis supporting each plan element and describing how the plan addresses every condition on the railroad's property that is likely to affect emergency response. FRA also reviews each emergency preparedness plan to confirm that each railroad control center maintains current emergency telephone numbers, in particular, the emergency responder's telephone number and telephone numbers of the railroads that operate on adjacent track.

Debriefing and critique sessions must be conducted by railroads after each emergency passenger situation/full scale simulation where there is a passenger or employee fatality, an injury to one or more crew members or a passenger involving admission to a hospital, or the evacuation of a passenger train. FRA reviews required debriefing and critique session records to verify that railroads were able to determine, at a minimum, the following: whether the on-board communications equipment functioned properly; the elapsed time between the occurrence of the emergency situation/simulation and notification to emergency responders; whether the control center promptly initiated the required notifications; how quickly and effectively the emergency responders reacted after notification; and the efficiency of passenger egress from the car through the emergency exits. FRA reviews these records to confirm that railroads improve/amend their emergency preparedness plans, as appropriate, based on the information developed from these sessions.

3. Extent of automated information collection.

FRA highly encourages and strongly endorses the use of advance information technology, particularly electronic recordkeeping, wherever possible, to reduce burden on respondents. Accordingly—and in keeping with the requirements of the Paperwork Reduction Act (PRA) and the Government Paperwork Elimination Act—FRA has authorized railroads to retain records of designation of employees responsible for maintaining emergency phone numbers. Under the rule, about 80 percent of all responses will be collected electronically.

4. Efforts to identify duplication.

To our knowledge, no information is duplicated anywhere. Similar data is not available from any other source.

5. Efforts to minimize the burden on small businesses.

The “universe” of the entities under consideration includes only those small entities that can reasonably be expected to be directly affected by the provisions of this final rule. “Small entity” is defined in 5 U.S.C. 601. Section 601(6) defines “small entity” as having “the same meaning as the terms ‘small business,’ ‘small organization,’ and ‘small governmental jurisdiction,’” as defined by section 601. Section 601(3) defines a “small business” as having the same meaning as a “small business concern” under Section 3 of the Small Business Act. Section 601(4) defines “small organization” as “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Section 601(5) defines “small governmental jurisdiction” as “governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than fifty thousand.”

The U.S. Small Business Administration (SBA) stipulates “size standards” for small entities. It provides that the largest a for-profit railroad business firm may be (and remain classified as a “small entity”) is 1,500 employees for “Line-Haul Operating” railroads and 500 employees for “Short-Line Operating” railroads.³

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to the authority provided to it by SBA, FRA has published a final policy, which formally establishes small entities as railroads that meet the line haulage revenue requirements of a Class III railroad.⁴ FRA used this definition for this rulemaking in preparation of this rule along with the stipulation on government entities or agencies that serve small communities as stated above.

There are two intercity passenger railroads, the National Railroad Passenger Corporation (Amtrak) and Alaska Railroad, of which, neither can be considered a small entity. Amtrak is a Class I railroad and Alaska Railroad is a Class II railroad. Alaska Railroad is owned by the State of Alaska, which has a population well above 50,000.

There are 34 commuter or other short-haul passenger railroad operations in the United States. Most of these commuter railroads are part of larger transit organizations that receive Federal funds and serve major metropolitan areas with populations greater than 50,000. However, one such railroad does not fall in this category and is considered a small entity: Hawkeye Express (operated by the Iowa Northern Railway Company). All other passenger railroad operations in the United States are part of larger governmental

³ “Table of Size Standards,” U.S. Small Business Administration, January 31, 1996, Title 13 CFR Part 121.

⁴ See 68 FR 24891, May 9, 2003.

entities, whose service jurisdictions exceed 50,000 in population. Based on the definition, they are not considered to be small entities.

6. Impact of less frequent collection of information.

If this information were not collected or were collected less frequently, railroad safety nationwide would be considerably hindered. Specifically, the number of accidents/incidents, such as derailments, and collisions, and the severity of injuries might increase because railroads did not have an approved EPP and railroad employees did not respond adequately and in a timely fashion. Without an EPP and necessary amendments to an EPP, different categories of railroad workers would not know their roles and responsibilities in the event of a collision, derailment, or other emergency situation. Because of this information collection, FRA reviews and approves the EPPs of covered railroads. Consequently, it can ensure that railroads have comprehensive emergency preparedness plans; can ensure that railroads do not cut corners on different aspects of their EPP; and can ensure that essential railroad employees, including on-board and control center, as well as emergency response communications center personnel, receive the required training to manage various types of emergency situations.

The collection of information contributes to rail safety because FRA can verify that railroads conduct debriefing and critique sessions after each emergency passenger situation or full-scale simulation where there is a passenger or employee fatality, an injury to one or more crewmembers or a passenger involving admission to a hospital, or the evacuation of a passenger train. FRA reviews required debriefing and critique session records to verify that railroads were able to determine, at a minimum, whether the on-board communications equipment functioned properly, the elapsed time between the occurrence of the emergency situation/simulation and notification to emergency responders involved, whether the control center promptly initiated the required notifications, how quickly and effectively the emergency responders reacted after notification, and the efficiency of passenger egress from the car through the emergency exits. Because FRA reviews these records, it can confirm that railroads improve/amend their emergency preparedness plans, as appropriate, based on the information developed from these debriefing and critique sessions. Without these essential sessions and accompanying records, FRA and railroads could not detect emergency response deficiencies and could not develop necessary corrective measures. This could result in greater injuries and loss of life in future emergency situations.

In sum, this information collection serves the agency's primary mission and is a vital part of FRA's rail safety program.

7. Special circumstances.

All information collection requirements are in compliance with this section.

8. Compliance with 5 CFR 1320.8.

As required by the Paperwork Reduction Act of 1995, FRA published a notice in the Federal Register on April 15, 2020, soliciting comment on this particular information collection.⁵ FRA received no comments pertaining to this collection of information in response to this notice.

9. Payments or gifts to respondents.

There are no monetary payments or gifts made to respondents associated with the information collection requirements contained in this regulation.

10. Assurance of confidentiality.

The information contained on various report forms is a matter of public record and, therefore, confidentially is not promised to any respondent.

11. Justification for any questions of a sensitive nature.

No sensitive information is requested.

12. Estimate of burden hours for information collected.

CFR Section	Respondent universe	Total Annual responses	Average time per responses	Total annual burden hours	Total cost equivalent
239.11—Penalties	<i>To FRA’s knowledge, there were no (zero) falsified records or reports over the past three years regarding 49 CFR Part 239. FRA estimates that there will be zero (0) falsified records or reports over the next three years. Consequently, there is no burden associated with this requirement.</i>				
239.13—Waivers	34 railroads	1 waiver petition	10 hours	10 hours	\$760
239.101/201/203—Emergency preparedness plan: amended plans	34 railroads	6 amended plans	16 hours	96 hours	\$7,296
—Non-substantive changes to emergency preparedness plan	34 railroads	4 amended plans	1 hour	4 hours	\$304
—Emergency preparedness plans for new/start-up railroads	34 railroads	1 new plan	80 hours	80 hours	\$6,080
239.101(a)(1)(i)—Communication—Initial and on-board notification	<i>This is a usual and customary procedure for all passenger railroads, and would not impose an additional burden on the railroads.</i>				

⁵ See: 85 FR 21066.

239.101(a)(1)(ii)—RR designation of employees responsible for maintaining emergency phone numbers for use in contacting outside emergency responders and appropriate RR officials that a passenger emergency has occurred	34 railroads	34 designations	5 minutes	2.8 hours	\$213
—Commuter/intercity passenger RRs gathering/keeping emergency phone numbers	34 railroads	34 lists/updated records	1 hour	34 hours	\$2,584
239.101(a)(3)—Coordinating applicable portions of emergency preparedness plan between each railroad hosting passenger service and each railroad that provides or operates such service	<i>This burden is covered under § 239.101/201/203 — Emergency preparedness plan: amended plans.</i>				
239.101(a)(5)—Updating emergency responder liaison information and conducting emergency simulation	<i>This burden is covered under § 239.101/201/203 — Emergency preparedness plan: amended plans.</i>				
239.101(a)(7)—RR dissemination of information regarding emergency procedures/instructions	1 new railroad	350 cards/1 safety message	5 minutes	29.3 hours	\$2,227
	34 railroads	1,000 cards/100 safety messages	5 minutes	91.7 hours	\$6,969
239.105—Debrief and critique sessions	34 railroads	25 debrief/critique sessions	5 minutes	2.1 hours	\$160
239.107(a)(1)—Marking of Emergency Exits	<i>This burden is covered under OMB Control No. 2130-0576 under § 238.112.</i>				
—(a)(2) Marking of emergency exits	<i>This burden is covered under OMB Control No. 2130-0576 under § 238.112.</i>				
—(b) Records of inspection, maintenance, and repair	<i>This burden is covered under OMB Control No. 2130-0544 under § 238.307.</i>				
239.301(b)-(c)—Maintenance and retention of operational tests/inspection records	<i>This burden is covered under OMB Control No. 2130-0035 under § 217.9.</i>				
—(d) RR retention of 1 copy of operational testing & inspection program	<i>This burden is covered under OMB Control No. 2130-0035 under § 217.9.</i>				
—(e) RR six-month review of tests/inspections and adjustments to program of operational tests/inspections	<i>This burden is covered under OMB Control No. 2130-0035 under § 217.9.</i>				
—(f) RR annual summary of tests/inspections & record of	<i>This burden is covered under OMB Control No. 2130-0035 under § 217.9.</i>				

<i>each summary</i>					
Total	34 railroads	1,556 responses	N/A	350 hours	\$26,592

13. Estimate of total annual costs to respondents.

There are no additional costs to respondents for this information collection request.

14. Estimate of Cost to Federal Government.

To estimate the government administrative cost, the 2020 Office of Personnel Management wage rates were used for the Washington, D.C. area. FRA uses an hourly wage rate of \$116 for each government administrative hour.⁶ FRA estimates that it takes approximately 20 hours annually to review documents required by this rule.

FRA estimates a total annual government cost of \$2,314 for this information collection request.

15. Explanation of program changes and adjustments.

The current OMB agency inventory for this information collection exhibits a total burden of 21,470 hours and 69,670 responses, while the present submission reflects a total burden of 350 hours and 1,556 responses. Hence, there is a total decrease in burden of 21,120 hours and 68,144 responses.

FRA provided a thorough review of this package and determined many of our initial figures were based on rough estimates. Additionally, we realized some of the estimates were double counted and others were outdated. Moreover, other estimates were not PRA requirements, thus leading to the increased figures, which were decreased accordingly in this submission. Thus, our latest review has refined our estimates to be more accurate. The table below provide specific information on the review of any that have changed.

CFR Section	Total Annual responses	Total Annual responses	Adjustments	Total annual burden hours	Total annual burden hours	Adjustments
239.13—Waivers	1 waiver petition	1 waiver petition	0 waiver petition	20 hours	10 hours	-10 hours
239.101/201/203—Emergency preparedness plan (EPP): amended plans	45 amended plans	6 amended plans	-39 amended plans	1,410 hours	96 hours	-1,314 hours

⁶ GS-14, Step 5 annual wage rate of \$66.10 x 75% overhead = \$115.68.

—Subsequent years: amended EPPs	9 amended plans	0 amended plans	-9 amended plans	282 hours	0 hours	-282 hours
—Non-substantive changes to EPP	4 amended plans	4 amended plans	0 amended plans	4 hours	4 hours	0 hours
—EPPs for new/start-up railroads	2 new plans	1 new plan	-1 new plan	160 hours	80 hours	-80 hours
—Initial training of railroad control center and emergency response communications center personnel on EPP provisions	540 initially trained employees	0 initially trained employees	-540 initially trained employees	4,320 hours	0 hours	-4,320 hours
—Periodic EPP training of the same groups of employees	54 periodically trained employees	0 periodically trained employees	-54 periodically trained employees	216 hours	0 hours	-216 hours
—Initial EPP training of new railroad employees and contractor/contracted employees	135 trained new employees	0 trained new employees	-135 trained new employees	1,080 hours	0 hours	-1,080 hours
239.101(a)(1)(ii)—RR designation of employees responsible for maintaining emergency phone numbers for use in contacting outside emergency responders and appropriate RR officials that a passenger emergency has occurred	45 designations	34 designations	-11 designations	4 hours	3 hours	-1 hours

—Commuter/intercity passenger RRs gathering/keeping emergency phone numbers	2 lists/updated records	34 lists/updated records	32 lists/updated records	2 hours	34 hours	32 hours
239.101(a)(3)—Coordinating applicable portions of EPPs between each railroad hosting passenger service and each railroad that provides or operates such service	1 coordinated plan	0 coordinated plans	-1 coordinated plan	16 hours	0 hours	-16 hours
239.101(a)(5)—Updating emergency responder liaison information and conducting emergency simulation	45 updated plans	0 updated plans	-45 updated plans	1,800 hours	0 hours	-1,800 hours
239.101(a)(7)—RR dissemination of information regarding emergency procedures/instructions	1,300 cards/2 programs/2 safety messages + 2 programs + 2 safety messages	350 cards/1 safety message	957 responses	300 hours	29 hours	-271 hours
	0 responses	1,000 cards/100 safety messages	1,000 cards/100 safety messages	0 hours	92 hours	92 hours
239.105—Debrief and critique sessions	79 debrief/critique sessions	25 debrief/critique sessions	-54 debrief/critique sessions	2,133 hours	2 hours	-2,131 hours
239.107(a)(1)—Marking of Emergency Exits	4,575 decals + 1,950 decals	0 responses	-4,575 decals + -1,950 decals	706 hours	0 hours	-706 hours
—(a)(2) Marking of emergency exits	6,320 decals + 1,300 labels	0 responses	-6,320 decals + -1,300 labels	744 hours	0 hours	-744 hours
—(b) Records of inspection, maintenance, and repair	1,800 window records + 1,200 door records	0 responses	-1,800 window records + -1,200 door records	1,000 hours	0 hours	-1,000 hours
239.301(a)—RR	25,000	0 operational	-25,000	6,250	0 hours	-6,250

operational tests/inspection of on-board, control center, & emergency response center personnel	operational tests/inspections	tests/inspections	operational tests/inspections	hours		hours
239.301(b)-(c)—Maintenance and retention of operational tests/inspection records	25,000 records	0 records	-25,000 records	833 hours	0 hours	-833 hours
—(d) RR retention of 1 copy of operational testing & inspection program	90 program copies/records	0 program copies/records	-90 program copies/records	5 hours	0 hours	-5 hours
—(e) RR six-month review of tests/inspections and adjustments to program of operational tests/inspections	90 periodic reviews/analyses	periodic reviews/analyses	-90 periodic reviews/analyses	180 hours	0 hours	-180 hours
—(f) RR annual summary of tests/inspections & record of each summary	45 annual summaries + 30 annual summary hard copies	0 responses	-45 annual summaries + -30 annual summary hard copies	5 hours	0 hours	-5 hours
Total	69,670 responses	1,556 responses	-68,114 responses	21,470 hours	350 hours	-2,1120 hours

17. Approval for not displaying the expiration date for OMB approval.

Once OMB approval is received, FRA will publish the approval number for these information collection requirements in the Federal Register.

18. Exception to certification statement.

No exceptions are taken at this time.

Meeting Department of Transportation (DOT) Strategic Goals

This information collection supports the main DOT strategic goal, namely transportation safety.